

VOLUME NO. 37

OPINION NO. 117

SUBDIVISIONS - Occasional sales, computation of twelve-month limitation;

LAND - Subdivisions, occasional sales, twelve-month limitation;

MONTANA CODE ANNOTATED - Sections 76-3-103(7), 76-3-207, 76-3-401 .

HELD: The twelve-month limitation period on occasional sales of land in sections 76-3-207(1)(d) and 76-3-103(7), MCA, commences with the actual transfer of interest in the parcel of land from the grantor to the grantee.

23 December 1980

Ted O. Lympus, Esq.  
Flathead County Attorney  
Flathead County Courthouse  
P.O. Box 1516  
Kalispell, Montana 59901

Dear Mr. Lympus:

You have requested my opinion on the following question:

When does the twelve-month time period for occasional sales begin to run?

Section 76-3-207(1), MCA, provides that certain land transfers are not subdivisions, including:

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale.

Section 76-3-103(7), MCA, defines "occasional sale" as "one sale of a division of land within any 12-month period." An occasional sale is nonetheless subject to the surveying requirements of section 76-3-401, MCA.

The question you have raised is whether the twelve-month period begins to run with the filing of a certificate of survey under section 76-3-401, et seq., MCA, or whether it begins to run with the actual sale of the particular parcel. You have correctly suggested that the period begins with the sale itself.

This is the obvious and necessary conclusion from the face of the statutes noted above. They prohibit a person from making more than one occasional sale in a twelve-month period. They do not prohibit the filing of more than one certificate of survey in a twelve-month period. Since both "occasional sale" and "certificate of survey" are defined in section 76-3-103, MCA, it is clear that if the Legislature had intended the filing of the certificate to be the significant act they would have so provided. The filing of the certificate merely creates the parcel for purposes of the Subdivision and Platting Act. It is the actual sale, however, that is restricted by section 76-3-207(1)(d), MCA. A sale is the actual transfer of title from the grantor to the grantee. DeMers v. O'Leary, 126 Mont. 528, 534, 254 P.2d 1080, 1084 (1953).

THEREFORE, IT IS MY OPINION:

The twelve-month limitation period on occasional sales of land in sections 76-3-207(1)(d) and 76-3-103(7), MCA, commences with the actual transfer of interest in the parcel of land from the grantor to the grantee.

Very truly yours,

MIKE GREELY  
Attorney General